1935.

Department of Land Rev & Agrt

OFFICE Board of Rev

STATION Madras

Mis No. 4291

A 50001

Dated 9-11-35

N.f.d

Pages in the file

(SUBJECT.)

Land (South Kanara) River-beds and accretions – ownership – claims of Wargdars – discussion – papers recorded

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SUBJECT:— Land (South Kanara) River-beds and accretions — ownership — claims of Wargdars — discussion — papers — recorded

READ AGAIN _____ dated _____ 19____.

,, ,, _____ _____ 19____.

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No. _____ From the _____, No. _____, dated _____ 19____

,, _____ ,, A 5000/35 ,, _____ 19____

,, _____ ,, _____ ,, _____ ,, _____ 19____

~~Order~~ Ms. / ~~Resolution~~ ~~Rout.~~ No. 4291, dated 9. 11. 1935.

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List of Papers put up

Mis 709 d 7-3-29 (Q)

Mis 3701 d 2-11-28 (X)

Mis 3799 d 10-11-28 (C)

Press 26 d 15-3-20 (K)

Vol regarding Tripathi Lawsuit (B)

Rt 3923 d 28/7/34 (J)

Mis 1225 d 18/4/32 (H)

Mis 64 d 7-1-32 (Z)

Mis 2950 d 23/9/31 (E)

Mis 452 d 12/2/29 (L)

Mis 3112 d 21-9-28 (W)

Mis 679 d 25/2/28 (G)

Mis 1111 d 28-5-19 (N)

Note file

Riverbeds and accretions - (South Kanara) - Ownership claims of waragdars - Examination of the general question.

Case which held that the riparian ownership ~~of~~ in rivers not navigable and not tidal lay with the Jenmi of the bank and that the Govt had no right to the riverbed

The following points arise for Consideration in this Connection :—

(1) What is the general law in regard to ownership of riverbeds

(2) What is the position of the Jenmi in Malabar

(3) What is the position of the Wargder in South Kanara

land has been surveyed and regular revenue accounts are being maintained by the Govt. Every holder of ryotwari tenure obtains a patta which shows the extent of private land and the assessment payable on it. No ryotwari holder can therefore claim rights of ownership in any land which is not included in his ~~patta~~ holding. In almost all cases the land

separately surveyed
and demarcated.
the rights of the Govt
therein have been
protected by declarations
in Settlement Registers
Every Settlement
Register Contains the
following passage

59 (B)
para 4

It must be dis
tinctly borne in mind
that a deduction of
20% has been made
from the gross produce
on account of un-
favourable seasons, and
on account of any
roads, channels, banks,
paths etc that may
have been treasured
in with the cultivated
area The fact
of the inclusion of
any Govt poramboke
in any survey field
does not confer on
the cultivator of the
field the right of

entering on such poramboke or of in any way interfering with it and any unauthorised encroachment on such poramboke will be severely dealt with." So all the beds of rivers whether separately demarcated or not are in all ryotwari areas the property of the crown as being occupied and ~~cultivated~~ cultivated waste lands and in this recev it has been laid down in section 2 of the Madras Land Encroachment Act of 1905 that the beds of rivers and streams are the property of Govt except as otherwise provided by law.

In all cases of acquisition of land by Govt for

public purposes. Govt paid compensation only for the private land that has been acquired under the Land Acquisition Act; and there are no cases in which Govt paid Compensation for land forming beds of rivers or streams. Further the Govt have Constructed in the beds of rivers, bridges irrigation works, anicuts etc. which proves their ownership of the riverbeds. In all cases when r. beds are cultivated — for eg:- 5(3) para 4

poramboke, and as poramboke they cannot except by grant from Govt. be claimed as private property.

Point (2) — Position of the Jenmi in Malabar.

The position of the Jenmi in Malabar in regard to ownership of river beds is governed by the High Courts judgment in Chapa Nana case. This was a suit brought by a Jenmi in South Malabar to obtain a declaration that the suit lands forming the bed of a 'thodu or stream and the lands on both sides of it, belong in jenmam right to him and that the Govt have no jenmam right over the suit

plots and to recover the same. The plaintiffs contention was that as the admitted riparian owner of the lands on both banks of the river he is entitled to the suit plots under the rule that the land in the bed of a non-navigable river belongs to the adjacent riparian owner upto the middle of the stream. The claim of the Govt to the suit lands, as held by Justice Krishnan, could not be supported by anything in Madras Act III of 1905, as Section 2 of the Act expressly reserves the prior rights of parties including those of a Jenmi in Malabar as pointed out in ILR 42 Madras 23. The Govt argued that the rule of riparian

ownership did not apply to Malabar at all that Malabar being a ryotwari area with periodical re-settlements of land tax the Govt must be taken to be the proprietor of the soil as in other ryotwari tracts that the rule in question should therefore be held to apply rather in their favour as the real riparian proprietors than against them, and that in any event its applicability in favour of the plaintiff was excluded in the present case by a special custom having the force of law existing in the Palghat TK where these lands are situated by

which all river accretions and riverbed lands vest in the Crown In 26 M L J. 385 the High Court held that Malabar Jenmis are undoubtedly proprietors of the soil In ILR 13 Madras 369 the High Court decided the case of ownership of a river accretion in favour of the Crown in Malabar At, on the ground that the river was tidal and navigable at the spot, and that the accretion was a sudden one. Justice Krishnan observed that the above case would have been decided against the Govt if the river was non-navigable and non-tidal Relying on the decisions in ILR 13, Madras 369, ILR IX M ILR 41 Madras 840 and 26 M L J 385 the High

Court decided this case in favour of the plaintiff. It held that the Special custom set up by the Govt was not proved and that the plaintiff alone was entitled to the Sirit lands on the principle of riparian ownership and that the Govt had no right to them. This judgment of the High Court became final as the Govt decided in G.O. no 580 Revenue dated 9/3/20 not to prefer any appeal to the Privy Council against the High Court's decision.

Manuals Vols I and II put up. In Vol I there is a detailed description of the warg tenure, the history and different kinds of wargs in the st. A warg is defined as a holding or an estate not necessarily one compact block, but may be composed of unconnected parts even in different villages In L.R. 28 Madras page 278 the warg is described as follows —

"Warg is derived from Sanscrit 'Varga' — a leaf and was applied to the palm leaves on which the revenue officials kept an account of the ryot's holding. A man's warg was simply the account of the assessments payable by him for his lands which were necessarily adjacent but might

situated at a distance from each other and even in different villages."

At page 263 of the same I.L.R. warg is again described as follows:—

"The word warg originally meant an account and was an account of the assessment the landholder had to pay; then it came to mean the land or estate in respect of which he was assessed. Except where inalienable patta's have been granted including all the land with specified boundaries wargs do not include land which has never been assessed."

Again at p. 259 of the same I.L.R. the warg is described as follows:—

"The whole is devided into estates (wargs)

which include cultivated cultivable, and waste land; but only the cultivated land is assessed. Any new cultivation is assessed at certain fixed rates according to the description of the soil As long as the proprietor pays the assessment, the Govt does not interfere and no cultivation accounts are kept the assessment being

ryotwari tenure of South Kanara and that obtaining in other Districts of the Presidency. In South Kanara lands of different kinds of unknown extents and lying often different places and even in different villages constitute a holding termed a 'warg' and the assessment is fixed in lump thereon. In other Districts the land is

payment of assessment to be previously fixed thereon and subject to the conditions and rules laid down in that behalf. that the holder of the land either under the old or the new system enjoys a proprietory right in his wang subject only to the payment of the assessment to the Govt and is not divested of the property except by a sale of the land for land revenue arrears or Civil Court decree or by his own acts of sale gift etc that he

his will

It is also observed that warg is the unit of assessment that the sub-division of holdings go on unrestrained subject to the rule that the whole estate continues answerable for the whole revenue with which it is assessed and that the wargdars are in the same position as pattadars or joint pattadars in other parts of the Presidency and that if a wargdar holds only a portion of the warg, he is liable when called upon to pay up on account of a default ~~of~~ on the part of the holder of another portion

Point (4). Whether the Wargdar in South Kanara at can claim

accretions in a riverbed

The decision in the Olapamanna Case applies only to Malakar St. In South Kanara however it seems that the wargdars cannot lay claim to the riverbeds on the principle of riparian ownership.

In 21 Indian Cases 720 the plaintiff claimed the bed of a natural course or a 'thodu' in South Kanara as his property on the ground that he was the owner of the lands on both sides of the 'thodu' as evidenced by certain documents to which the Govt were not a party. The plaintiff was not payin assessment on the be of the 'thodu'. It was held that the 'thodu' belongs to the Govt

M 3-8

M 19 (B)

In I.L.R. 28 Madras 257 the High Court held that there is a general presumption that forests and waste lands in South Kanara at are the property of the Govt. "Such use of leaves and manure of the Govt forests is permitted by the Govt in favour of the wargs situated close to the forests and Govt not only permitted but also enjoined the wargders so long as 1854 to employ watchers

indicate any proprietory right as against the Govt The fact that they adduce no evidence to show that they have ever cultivated the forest or cut timber trees in it, or sold its produce or planted up the slopes, suggests that their occupation is not proprietory, but only permissive in accordance with the 'Kumaki' or 'nettikat' privileges allowed by Govt and such is the real character of their occupation appears from the statements of their own ~~A~~ witnesses as well as from the evidence of the village officers x x All this evidence shows that the claimants though using the leaves and manure of the forest for the benefit of their wara lands did so,

not by reason of any proprietory right in the forest but in accordance with the well-known "Kumaki" and "nettient" privileges sanctioned by Govt in favour of wards adjacent to the Govt forests."

The presumption laid down in this decision that the Govt is the owner of all forests and waste lands in the district would also apply to

accretions in riverbeds
on the principle
of riparian ownership
for orders

B 20/10/35 In their decision in
XXVIII 9 LR p 257 the
High Court has reviewed in detail
the revenue history and tenures
of the Sharavara St and have
arrived at the conclusion that
there is a general presumption p 286 ibid
that forest & immemorial
immemorial waste land in Sharavara
not exclusively occupied by any
person or body of persons is the
property of Govt. & that as regards this St
the principle
to start with is that waste lands
belong to the state. The position
of the Wargdar in Sharavara St
is the same as that of a Mirasidar
in the East Coast Dts & ~~has no~~
~~riparian rights in waste land~~
The High court has also held
that the revenue history & tenures
of the Sharavara St are different
from those of Malabar - The Wargdar of Sh
Stands therefore on a different
footing from the Jannis of Malaba

The Courts have held that the Janmi in Malabar is the proprietor of the soil and have disallowed the contention of Govt that the Janmi also stands on the same footing as a ryotwari holder. Vide section 2(c) of Madras Act III of 1905 = & para 9 of the judgment in the Chappamancad case of Justice Krishnan, at page 605 BP 26 Pressd 15. 3. 20.

The case law as regards the Wargdar of the S. Kanara Dt is in favour of Govt. He has been recognised to be on the same footing as a ryotwari holder in the East Coast Dts. Vide. ILR XXVIII Madras 257 cited above & 21 Indian cases 720- mentioned at p 19 (B). Note on Irrigation Law & Cognate

in which Govt directed that
land value & back assessment
should be ~~&~~ levied on encroachments
on accretions & formations
in rivers in the S. Kanara Dt
& to the partial modification
of these orders in para 2 (b) of
G.O. No. 173 Rev. dt 25.1.29. directing
only the collection of back assessment
& not land value, so as to
balance the gains & losses
sustained by the owners due to
alluvion & diluvion

These orders also indicate
that the wang-dar of the S Kanara
has been treated in the same way
as a ryotwari holder & that
no claims to river beds or
accretions on rivers of the wang
as the adjacent riparian owner
has ever been recognised

In 7 (Q). BP No. 709
7.3.29

Dr 25.7.35 28 — Dr 3.11.35

right in immemorial waste -
and such waste must include
streams and rivers.

There is possibly one exception
and that is in the case of
land included in the 8q 3
mul - patta issued before
1644

Aw
11.3.1-

[illegible] I am obliged to the office a
S for the very clear note above
which clears the [illegible] position of
the wazdar in respect of river beds &
accretions thereon

Eb
5.11.35